

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TENNESSEE

In re:

GLENNA F. KIDD

Debtor

No. 97-16398

Chapter 13

MEMORANDUM

Glenna F. Kidd, the Debtor, has filed a motion for a stay pending appeal of the court's order dismissing her Chapter 13 case. The facts are as follows. *Fed. R. Bankr. P.* 9017; *Fed. R. Evid.* 201; Hon. Barry Russell, *Bankruptcy Evidence Manual*, § 201.5 (1998).

On August 15, 1994, the Debtor filed a Chapter 13 petition in this court (No. 94-12932). That case was dismissed by the court on April 3, 1995. The Debtor paid one payment to the Trustee in that case, that being a \$1,000.00 payment made by the Debtor's attorney in January, 1995.

On April, 10, 1995, the Debtor filed another Chapter 13 case (No. 95-11341). The Debtor's plan was confirmed on June 5, 1995. That case was dismissed by the court on July 10, 1995. The Debtor made one payment, in the amount of \$825.00, to the Trustee. The Debtor's check was returned for insufficient funds.

On July 1, 1996, the Debtor filed a third Chapter 13 case (No. 96-13274). That case was dismissed by the court on October 31, 1996. The Debtor made one payment, in the amount of \$300.00, to the Trustee. The Debtor's check was returned for insufficient funds.

On November 5, 1996, the Debtor filed her fourth Chapter 13 case (No. 96-15864). The court dismissed the case on January 6, 1997, before confirmation of a Chapter 13 plan. The Debtor made no payments to the Trustee in that case.

The Debtor filed a Notice of Appeal of the order dismissing that case. In addition, the Debtor filed a “Complaint of Constitutional and Judicial Misconduct” and a Motion for Stay Pending Appeal. The Debtor also filed a “Memorandum of Points and Authorities.” On February 14, 1997, the Debtor filed a Motion to Dismiss her Appeal, and an Order was entered dismissing the appeal on March 26, 1997. Order entered February 18, 1997.

On February 14, 1997, the Debtor filed her fifth Chapter 13 case (No. 97-10873). The Debtor failed to make her plan payments, and did not appear at the hearing on the objection to confirmation of her plan and the motion to dismiss her case. As a result, the Debtor’s case was dismissed on April 30, 1997.

On October 31, 1997, the Debtor filed her present Chapter 13 case (No. 97-16398). On November 14, 1997, the court entered an order directing the Debtor to make monthly payments of \$360.00 to the Trustee pending confirmation of her plan. The Trustee filed a Motion to Dismiss the Debtor’s case with prejudice on November 17, 1997. A hearing on this motion was originally scheduled for December 15, 1997.

On January 5, 1998, the Debtor filed a Motion for Continuance and Extension of Time to Make Payments to Trustee. The Bankruptcy Court entered an order on January 8, 1998, postponing until January 26, 1998, the hearing on the Trustee’s Motion to Dismiss and Objection

to Confirmation. The order provided that, “The Debtor is to have her payments current by the date of the hearing.” The Debtor made no payments whatsoever to the Trustee, and failed to attend the hearing on January 26, 1998. On January 28, 1998, the Bankruptcy Court entered an order dismissing the Debtor’s case, pursuant to 11 U.S.C. § 109(g).

The criteria to consider on a motion pursuant to Bankruptcy Rules 7062 and 8005 are the same criteria that a district court would consider in an appropriate motion brought pursuant to *Fed. R. Civ. P. 62* and *Fed. R. App. P. 8*. *Michigan Coalition of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150 (6th Cir. 1995), *rev’d on other grounds* 954 F.2d 1174 (6th Cir. 1992). The factors to be considered regarding the issuance of a stay pending appeal are “(1) whether the stay applicant has made a strong showing that she is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies. *Hilton v. Braunskil*, 481 U.S. 770, 776, 107 S.Ct. 2113, 2119, 95 L.Ed.2d. 724 (1987).

In a period of 39 months, the Debtor has filed six Chapter 13 cases. The Chapter 13 trustee has received from the debtor only the \$1,000. It was received in her first case that was filed more than three years ago. In this case the court entered orders on November 14, 1997, and January 8, 1998, directing the Debtor to make payments to the Chapter 13 trustee pending confirmation of a Chapter 13 plan. The court entered an order granting the Debtor’s request to extend the time for her to make payments until the hearing on January 26, 1998, on the objection to confirmation and the trustee’s motion to dismiss. The debtor, however, failed to make any payments. She also failed to attend the hearing.

This case differs greatly from the *Barrett* case decided by the Sixth Circuit. In this case the court has not seen any change of circumstances suggesting that the Debtor can submit a confirmable plan and will be able to carry it out. The facts suggest just the opposite. *Society National Bank v. Barrett (In re Barrett)*, 964 F.2d 588 (6th Cir. 1992).

In each of the Debtor's six cases, she has had the benefit of the automatic stay that protects her property from the claims of her creditors. 11 U.S.C. § 362(a). She has had the benefit of the automatic stay without making any substantial payments to creditors.

Section 109(g) of the Bankruptcy Code "was enacted to prevent debtors from using repetitive filings as a method of frustrating creditors' efforts to recover what is owed to them." 2 Lawrence P. King, *et al.*, *Collier on Bankruptcy* ¶ 109.08 at 109-45 (15 ed. 1997). The court had ample ground for dismissal under Bankruptcy Code § 109(g) based on the Debtor's prior conduct. The Debtor is not likely to succeed on appeal based on her prior record of filing Chapter 13 cases and not making any payments to the Chapter 13 trustee.

The dismissal of the case revested the property of the bankruptcy estate in the Debtor free of the automatic stay. 11 U.S.C. § 349(b)(3) & § 362(c). A stay pending appeal would amount to aiding the Debtor in abusing the rights of her creditors by the continued misuse of the bankruptcy system. In this situation the Debtor's creditors should have the opportunity to take action, rather than being delayed any longer by a stay pending appeal.

Section 109(g) was enacted to reflect public policy against abuse of the bankruptcy system by means of repetitive filings. It follows that the public interest favors not only dismissal of the Debtor's Chapter 13 case but also denial of a stay pending appeal.

The court notes that the Debtor has failed to pay the filing fee for her appeal. The rules, however, leave to the district court the question of whether the appeal should be dismissed for that reason. *Fed. R. Bankr. P. 8001(a)*. The court will enter an order denying the motion.

This Memorandum constitutes findings of fact and conclusions of law as required by *Fed. R. Bankr. P. 7052*.

At Chattanooga, Tennessee.

BY THE COURT

entered March 3, 1998

R. THOMAS STINNETT
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TENNESSEE

In re:

No. 97-16398

Chapter 13

GLENNA F. KIDD

Debtor

ORDER

In accordance with the court's memorandum opinion entered this date,

It is ORDERED that the Debtor's Motion For Stay Pending Appeal is DENIED.

ENTER:

BY THE COURT

entered March 3, 1998

R. THOMAS STINNETT
U.S. BANKRUPTCY JUDGE